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DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

(T.D. 74-142)

Cotton textiles—Restriction on entry

Restriction on entry of cotton textiles in certain categories manufactured or produced in Colombia

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., April 30, 1974.

There is published below the directive of April 22, 1974, received by the Commissioner of Customs from the Chairman, Committee for the Implementation of Textile Agreements, concerning the restriction on entry into the United States of cotton textiles in certain categories manufactured or produced in Colombia. This directive amends but does not cancel that Committee's directive of February 22, 1974 (T.D. 74-81).

This directive was published in the Federal Register on April 24, 1974 (39 FR 14537), by the Committee.

(QUO-2-1)

J. D. COLEMAN,
Acting Director,
Duty Assessment Division.

THE ASSISTANT SECRETARY OF COMMERCE
WASHINGTON, D.C. 20230

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

April 22, 1974.

COMMISSIONER OF CUSTOMS
Department of the Treasury
Washington, D.C. 20229

DEAR MR. COMMISSIONER:

This directive amends but does not cancel the directive issued to you on February 22, 1974 by the Chairman of the Committee for the Implementation of Textile Agreements pursuant to the offer by the United

States Government to all of its bilateral cotton textile agreement partners to export on a one-time basis additional quantities of cotton yarn and/or fabric.

The list of additional ex-quota quantities enclosed with the letter of February 22, 1974 is hereby amended to show allocations of cotton textile products in the following categories from Colombia:

Category	*Amended Ex-Quota Amount*
5–27 (as a group)	5,000,000 square yards.
5/6	160,000 square yards.
9/10	500,000 square yards.
16	360,000 square yards.
22/23	2,800,000 square yards.
26 (duck)[1]	350,000 square yards.
26 (other than duck)[2]	830,000 square yards.
27	0 square yards.

The actions taken with respect to the Government of Colombia and with respect to imports of cotton textiles and cotton textile products from Colombia have been determined by the Committee for the Implementation of Textile Agreements to involved foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs being necessary to the implementation of such actions fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

SETH M. BODNER,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Resources and Trade Assistance.

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[1] The T.S.U.S.A. numbers for duck fabric are:

320.—01 through 04, 06, 08
321.—01 through 04, 06, 08
322.—01 through 04, 06, 08
326.—01 through 04, 06, 08
327.—01 through 04, 06, 08
328.—01 through 04, 06, 08

[2] All T.S.U.S.A. numbers in Category 26 other than those indicated in footnote 1.

(T.D. 74-143)

Personal declaration and exemptions—Customs Regulations amended

Amendment to the list of public international organizations entitled to free entry privileges; section 148.87(b), Customs Regulations, amended

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C.

TITLE 19—CUSTOMS DUTIES

CHAPTER I—UNITED STATES CUSTOMS SERVICE

PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS

By Executive Order No. 11767 signed February 19, 1974 (39 FR 6603), the President designated the Organization of African Unity (OAU) as a public international organization entitled to enjoy all the privileges, exemptions, and immunities provided for by the International Organizations Immunities Act of December 29, 1945 (59 Stat. 669).

The names of public international organizations currently designated as entitled to free entry privileges under the International Organizations Immunities Act are set forth in section 148.87(b) of the Customs Regulations, together with the number and date of the Executive order by which they were designated.

Accordingly, section 148.87(b) is amended by the following addition (in proper alphabetical order):

Organization	*Executive Order*	*Date*
Organization of African Unity (OAU)	11767	February 19, 1974

(R. S. 251, as amended, secs. 498, 624, 46 Stat. 728, as amended, 759, sec. 1, 59 Stat. 669; 19 U.S.C. 66, 1498, 1624, 22 U.S.C. 288)

Inasmuch as this amendment merely corrects the listing of organizations entitled by law to claim free entry privileges as public international oragnizations, notice and public procedure thereon are found to be unnecessary and good cause exists for dispensing with a delayed effective date under the provisions of 5 U.S.C. 553.

(ADM-9-03)

LEONARD LEHMAN,
Acting Commissioner of Customs.

Approved April 25, 1974:

MATTHEW J. MARKS,
Acting Assistant Secretary of the Treasury.

[Published in the Federal Register May 8, 1974 (39 FR 16343)]

(T.D. 74-144)

Cotton textiles—Restriction on entry

Restriction on entry of cotton textile products in categories 46/47 manufactured or produced in Portugal

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., May 7, 1974.

There is published below the directive of April 29, 1974, received by the Commissioner of Customs from the Chairman, Committee for Implementation of Textile Agreements, concerning the restriction on entry into the United States of cotton textile products in categories 46/47 manufactured or produced in Portugal. This directive amends but does not cancel that Committee's directive of December 20, 1973 (T.D. 74-32).

This directive was published in the Federal Register on May 2, 1974 (39 FR 15348), by the Committee.

(QUO-2-1)

R. N. MARRA,
Director,
Duty Assessment Division.

THE ASSISTANT SECRETARY OF COMMERCE
WASHINGTON, D.C. 20230

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

April 29, 1974.

COMMISSIONER OF CUSTOMS
Department of the Treasury
Washington, D.C. 20229

DEAR MR. COMMISSIONER:

This directive amends but does not cancel the directive issued to you on December 20, 1973 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton textiles and cotton textile products produced or manufactured in Portugal.

The first paragraph of the directive of December 20, 1973 is hereby amended, effective as soon as possible, to include a level of restraint of 89,805 dozen for cotton textile products in Categories 46 and 47 combined for the twelve-month period which began on January 1, 1974. This level has not been adjusted to reflect any entries made on or after January 1, 1974.

In carrying out this directive, entries of cotton textile products in Category 46 produced or manufactured in Portugal which have been exported to the United States from Portugal prior to January 1, 1974, shall, to the extent of any unfilled balances, be charged against the level of restraint established for such goods during the period January 1, 1973 through December 31, 1973. In the event that the level of restraint for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this letter.

Cotton textile products in Category 47 produced or manufactured in Portugal and which have been exported to the United States prior to January 1, 1974, shall not be subject to this directive.

Cotton textile products in Category 47 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448 (b) prior to the effective date of this directive shall not be denied entry under this directive.

The level of restraint set forth above is subject to adjustment pursuant to the provisions of the bilateral agreement of November 17, 1970, between the Governments of the United States and Portugal which provide, in part, that within the aggregate limit, the limits on certain categories may be exceeded by not more than 5 percent; for the limited carryover of shortfalls in certain categories to the next agreement year; and for administrative arrangements.

A detailed description of the categories in terms of T.S.U.S.A. numbers was published in the Federal Register on January 25, 1974 (39 FR 3430).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of Portugal and with respect to imports of cotton textiles and cotton textile products from Portugal have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

SETH M. BODNER,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Resources and Trade Assistance

(T.D. 74-145)

Cotton textiles—Restriction on entry

Restriction on entry of cotton textiles in category 26 (other) manufactured or produced in the Czechoslovak Socialist Republic

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., May 7, 1974.

There is published below the directive of April 29, 1974, received by the Commissioner of Customs from the Chairman, Committee for the Implementation Agreements, concerning the restriction on entry into the United States of cotton textiles in category 26 (other) manufactured or produced in the Czechoslovak Socialist Republic.

This directive was published in the Federal Register on May 2, 1974 (39 FR 15349), by the Committee.

(QUO-2-1)

R. N. MARRA,
Director,
Duty Assessment Division.

THE ASSISTANT SECRETARY OF COMMERCE
WASHINGTON, D.C. 20230

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

April 29, 1974.

COMMISSIONER OF CUSTOMS
Department of the Treasury
Washington, D.C. 20229

DEAR MR. COMMISSIONER:

Pursuant to the Bilateral Cotton Textile Agreement of August 29, 1969, as extended, between the Governments of the United States and the Czechoslovak Socialist Republic, and in accordance with the procedures of Executive Order 11651 of March 3, 1972, you are directed to prohibit, effective May 1, 1974 and for the twelve-month period extending through April 30, 1975, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 26 (other than duck),[1] produced

[1] The T.S.U.S.A. Nos. for duck fabric not covered by this directive are:

320.—01 through 04, 06, 08	326.—01 through 04, 06, 08
321.—01 through 04, 06, 08	327.—01 through 04, 06, 08
322.—01 through 04, 06, 08	328.—01 through 04, 06, 08

or manufactured in the Czechoslovak Socialist Republic, in excess of the level of restraint for the period of 1,276,281 square yards.

Cotton textile products in Category 26 (other than duck),[1] produced or manufactured in the Czechoslovak Socialist Republic and which have been exported prior to May 1, 1974, shall, to the extent of any unfilled balances, be charged against the level of restraint established for such goods during the period May 1, 1973 to April 30, 1974. In the event that the level of restraint established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this letter.

The level of restraint set forth above is subject to adjustment pursuant to the provisions of the bilateral agreement of August 29, 1969, as extended, between the Governments of the United States and the Czechoslovak Socialist Republic which provide, in part, that within the aggregate limit, the limitation on Category 26 (other than duck)[1] may be exceeded by not more than 5 percent; for the limited carryover of shortfalls in certain categories to the next agreement year; and for administrative arrangements.

A detailed description of the categories in terms of T.S.U.S.A. numbers was published in the Federal Register on January 25, 1974 (39 F.R. 3430).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of the Czechoslovak Socialist Republic and with respect to imports of cotton textile products from the Czechoslovak Socialist Republic have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affiairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

SETH M. BODNER,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Resources and Trade Assistance

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[1] See footnote on p. 6.

537-665—74——2

(T.D. 74-146)

Cotton textiles—Restriction on entry

Restriction on entry of cotton textiles and cotton textile products in certain categories manufactured or produced in Mexico

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., May 7, 1974.

There is published below the directive of April 25, 1974, received by the Commissioner of Customs from the Chairman, Committee for the Implementation of Textile Agreements, concerning the restriction on entry into the United States of cotton textiles and cotton textile products in certain categories manufactured or produced in Mexico.

This directive was published in the Federal Register on May 1, 1974 (39 FR 15206), by the committee.

(QUO-2-1)

R. N. MARRA,
Director,
Duty Assessment Division.

THE ASSISTANT SECRETARY OF COMMERCE
WASHINGTON, D.C. 20230

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

April 25, 1974.

COMMISSIONER OF CUSTOMS
Department of the Treasury
Washington, D.C. 20229

DEAR MR. COMMISSIONER:

Pursuant to the Bilateral Cotton Textile Agreement of June 29, 1971, as amended, between the Governments of the United States and Mexico, and in accordance with the procedures of Executive Order 11651 of March 3, 1972, you are directed to prohibit, effective May 1, 1974 and for the twelve-month period extending through April 30, 1975, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textiles and cotton textile products in Categories 1 through 64, produced or manufactured in Mexico, in excess of the designated levels of restraint set forth below.

The combined level of restraint for Categories 1 through 4, shall be 12,343,805 pounds.

The overall level of restraint for Categories 5 through 27 and part of 64 (knit fabrics) shall be 48,215,081 square yards equivalent.

Within the overall level of restraint for Categories 5 through 27 and part of 64 (knit fabrics) the following specific levels of restraint shall apply:

Category	*Twelve-Month Level of Restraint*
9/10	15,245,376 sq. yds.
22/23	16,295,376 sq. yds.
26/27 and part of 64 (knit fabrics).	16,674,329 sq. yds. (of which not more than 7,813,969 square yards shall be in duck fabric [1], and not more than 723,516 square yards equivalent shall be in knit fabrics, T.S.U.S.A. Nos. 345.1020, 345.1040, 346.4560, 353.5014, and 359.1040).

Within the overall level of restraint for Categories 5 through 27 and part of 64 (knit fabrics), each category without a specific level of restraint is subject to a consultation level of 703,551 square yards, pursuant to paragraph 7 of the bilateral agreement, as amended. If appropriate, future directions concerning these categories will be made to you by letter.

The overall level of restraint for Categories 28 through 63 and 64 (excluding knit fabrics) shall be 8,566,425 square yards equivalent.

Within the overall level of restraint for Categories 28 through 63 and 64 (excluding knit fabrics), the following specific levels of restraint shall apply:

Category	*Twelve-Month Level of Restraint*
30/31	2,715,517 numbers.
64 (excluding knit fabrics)[2]	704,642 pounds (of which not more than 452,983 pounds shall be in zipper tape, T.S.U.S.A. No. 347.3340).

[1] The T.S.U.S.A. Nos. for duck fabric are:

320.—01 through 04, 06, 08
321.—01 through 04, 06, 08
322.—01 through 04, 06, 08
326.—01 through 04, 06, 08
327.—01 through 04, 06, 08
328.—01 through 04, 06, 08

[2] All of Category 64 except T.S.U.S.A. Nos. 345.1020, 345.1040, 346.4560, 353.5014 and 359.1040.

Within the overall level of restraint for Categories 28 through 63, and 64 (excluding knit fabrics), each category without a specific level of restraint is subject to a consultation level of 492,485 square yards equivalent. If appropriate, future directions concerning these categories will be made to you by letter.

In carrying out this directive, cotton textiles and cotton textile products in Categories 1 through 64 produced or manufactured in Mexico and which have been exported to the United States prior to May 1, 1974, shall to the extent of any unfilled balances, be charged against the levels of restraint established for such goods during the period May 1, 1973 through April 30, 1974. In the event that any level of restraint for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter.

The levels of restraint set forth above are subject to adjustment pursuant to the provisions of the bilateral agreement of June 29, 1971, as amended, between the Governments of the United States and Mexico which provide, in part, that within the aggregate limit, the group limits for Group I and Group II may be exceeded by not more than 10 percent, and the limit on Group III may be exceeded by not more than 5 percent; within the aggregate and applicable group limits, limits on certain categories may be exceeded by not more than 5 percent; for the limited carryover of shortfalls in certain categories to the next agreement year; and for administrative arrangements.

A detailed description of the categories in terms of T.S.U.S.A. numbers and factors for converting category units into equivalent square yards was published in the Federal Register on January 25, 1974 (39 F.R. 3430).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of Mexico and with respect to imports of cotton textiles and cotton textile products from Mexico have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

SETH M. BODNER,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Resources and Trade Assistance

(T.D. 74–147)

Foreign currencies—Daily rates for countries not on quarterly list

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Hong Kong dollar, Iran rial, Philippine peso, Singapore dollar, Thailand baht (tical)

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., April 29, 1974.

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates in U.S. dollars for the dates and foreign currencies shown below. These rates of exchange are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR, Part 159, Subpart C).

Hong Kong dollar:
For the period April 15 through April 19, 1974, rate of $0.1970.

Iran rial:
For the period April 15 through April 19, 1974, rate of $0.0149.

Philippines peso:

April 15, 1974	$0.1480
April 16, 1974	.1495
April 17, 1974	.1480
April 18, 1974	.1480
April 19, 1974	.1480

Singapore dollar:

April 15, 1974	$0.4120
April 16, 1974	.4115
April 17, 1974	.4120
April 18, 1974	.4140
April 19, 1974	.4120

Thailand baht (tical):
For the period April 15 through April 19, 1974, rate of $0.0495.

(LIQ–3–O:A:E)

R. N. MARRA,
Director,
Duty Assessment Division.

(T.D. 74–148)

Rules of the United States Customs Court

Amendments to the Rules of the United States Customs Court; effective June 1, 1974

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., May 8, 1974.

There is published for information and guidance amendments to the Rules of the United States Customs Court which will be effective June 1, 1974.

The Court Rules were heretofore published in T.D. 70–180 of August 20, 1970, and amendments were published in T.D. 70–260, T.D. 72–126 and T.D. 73–193.

(PRO 1-03 CC A)

VERNON D. ACREE,
Commissioner of Customs.

RULES OF THE UNITED STATES CUSTOMS COURT

Amendments to Rules 14.3(b) and 14.5 have been approved by the Court. The amended rules, effective June 1, 1974, will read as follows (changes indicated by underlineation):

RULE 14.3(b)

(b) Temporary Withdrawal:

(1) Except where restricted by law (28 U.S.C. § 2637(b)), any person may have access to the relevant papers in an action other than entries, invoices and laboratory reports, which shall be available only to the attorney of record or a party to the action.

The clerk may provide copies of accessible papers to any person upon payment of the prescribed fees as set forth in Rule 14.5.

(2) The Chief, Customs Section, Department of Justice, may withdraw the relevant papers in an action to a designated place in his offices for a period not to exceed 30 days: *Provided*, That upon notice from the clerk, such papers shall immediately be returned to the office of the clerk.

(3) Any person, qualified in accordance with paragraph (b)(1) of this rule, may withdraw the relevant papers in an action to a designated place in the offices of the Customs Court or the Customs Section, Department of Justice: *Provided*, That such papers are returned to

the office of the clerk no later than the close of business on the same day as they are withdrawn.

(4) Whenever any person withdraws relevant papers in accordance with paragraph (b)(1) of this rule, he shall sign and leave with the clerk a receipt describing the papers so withdrawn and the designated place to which the papers are to be taken.

RULE 14.5 Paragraphs (a) and (b) eliminated; "(c)" deleted before remaining paragraph.

Fee: The clerk shall receive, from the person at whose request photostatic copying of documents is performed, a fee of 25 cents, payable in advance, for each side of the page so photostated.

537-665—74——3

(T.D. 74–149)

Synopses of drawback decisions

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., May 3, 1974.

The following are synopses of drawback rates and amendments issued December 12, 1973, to April 4, 1974, inclusive; pursuant to sections 22.1 and 22.5, inclusive, Customs Regulations.

(DRA–1–09)

LEONARD LEHMAN,
Assistant Commissioner,
Regulations and Rulings.

(A) *Acetate, butyl, and acrylate, butyl.*—T.D. 51523–E, as amended, covering, among other things, hexylene glycol manufactured under section 1313(b) by Union Carbide Corp., New York, N.Y., at its Texas City, Tex.; and South Charleston and Institute, W. Va., factories, with the use of acetone, further *amended* to cover butyl acetate and butyl acrylate manufactured by the said company under section 1313(b) at the said factories and at the Taft, La., factory, with the use of butanol.

Amendment effective on articles manufactured on and after November 1, 1972, and exported on and after November 10, 1972.

Supplemental statement of February 19, 1974, forwarded to Regional Commissioner of Customs, New York, N.Y., April 1, 1974.

(B) *Automobiles.*—T.D. 54882–J, as amended, and particularly as amended by T.D.'s 67–272–N, and 73–324–D, covering, among other things, automobiles and automobile parts manufactured under section 1313(b) by American Motors Corp., Detroit, Mich., at its Kenosha, Wis., factory, with the use of galvanized sheet steel, further *amended* to cover automobiles manufactured under section 1313(b) by the said company at its above factory with the use of water pump housings.

Amendment effective on articles manufactured and exported on and after July 1, 1974.

Supplemental statement of July 19, 1973, forwarded to Regional Commissioner of Customs, Chicago, Ill., March 20, 1974.

(C) *Automotive and furniture parts; zinc alloy slabs.*—Zinc alloy slabs manufactured under section 1313(b) by Keeler Brass Co., Grand Rapids, Mich., at its factories located at Grand Rapids, Lake Odessa, and Cedar Springs, Mich., with the use of zinc ingots; automotive and furniture parts manufactured under section 1313(b) by the said company at its above factories with the use of zinc alloy slabs.

Rate effective on articles manufactured on and after April 25, 1973, and exported on and after May 25, 1973.

Manufacturer's drawback statements of February 12 and 26, 1974, forwarded to Regional Commissioner of Customs, Chicago, Ill., March 8, 1974.

(D) *Beverages, canned carbonated soft drink.*—T.D. 54093–D, as amended by T.D.'s 56436–L, 56495–B, 67–66–N, 69–144–S, and 73–236–T, covering, among other things, Diet Pepsi Cola bottling syrup manufactured under section 1313(b) by PepsiCo., Inc., Purchase, N.Y., with the use of liquid refined invert sugar, further *amended* to cover canned carbonated soft drink beverages manufactured by the company at a factory located at Portland, Ore., with the use of liquid refined invert sugar.

Amendment effective on articles manufactured and exported on and after August 1, 1967.

Supplemental statement of January 31, 1974, forwarded to Regional Commissioner of Customs, New York, N.Y., March 8, 1974.

(E) *Bins, grain storage and drying.*—Manufactured under section 1313(b) by Superior Equipment Manufacturing Co., division of Tiffany Industries, Inc., Maryland Heights, Mo., at its Mattoon, Ill., factory, with the use of galvanized steel sheet and coil.

Rate effective on articles manufactured on and after June 1, 1973, and exported on and after August 1, 1973.

Manufacturer's drawback statement of February 28, 1974, forwarded to Regional Commissioner of Customs, Chicago, Ill., March 11, 1974.

(F) *Cephalexin monohydrate.*—T.D. 52031–B, as amended, covering, among other things, antibiotics, known as Keflin and Keflordin, manufactured under section 1313(b) by Eli Lilly and Co., Indianapolis, Ind., at its various factories with the use of methionine feed grade, further *amended* to cover cephalexin monohydrate in various forms manufactured by the company under the provisions of section

1313(b) at its Clinton, Lafayette, and Indianapolis, Ind., factories, with the use of semicarbazide hydrochloride.

Amendment effective on articles manufactured on and after October 3, 1973, and exported on and after November 1, 1973.

Manufacturer's supplemental statement of February 11, 1974, forwarded to Regional Commissioner of Customs, Chicago, Ill., March 20, 1974.

(G) *Chemicals, agricultural.*—Technical chlorobenzilate, chlorobenzilate concentrate, and chlorobenzilate emulsifiable solution manufactured under section 1313(b) by Tower Chemical Co., Clermont, Fla., with the use of p,p′-dichlorobenzil; and on chlorobenzilate concentrate and chlorobenzilate emulsifiable solution manufactured under section 1313(b) by the company with the use of technical ethyl p,p′-dichlorobenzilate.

Rate effective on articles manufactured and exported on and after October 16, 1973.

Manufacturer's drawback statements of February 15 and March 4, 1974, forwarded to Regional Commissioner of Customs, Miami, Fla., March 18, 1974.

(H) *Craft, diesel powered aluminum.*—Manufactured under section 1313(g) by Teledyne Seacraft, Div. of Teledyne Industries, Berwick, La., for foreign account and ownership, or for the government of a foreign country, with the use of imported main propulsion diesel engines and electronic equipment.

Rate effective on articles manufactured on and after March 1, 1973, and exported on and after June 1, 1974.

Manufacturer's drawback statement of November 28, 1973, forwarded to Regional Commissioner of Customs, New Orleans, La., March 26, 1974.

(I) *Dungarees, cotton; and cotton slacks.*—Manufactured under section 1313(b) by Guy H. James Industries, Inc., Brooklyn, N.Y., at its Midwest City, Okla., factory, with the use of cotton piece goods.

Rate effective on articles manufactured on and after January 19, 1973, and exported on and after November 28, 1973.

Manufacturer's statement of March 6, 1974, forwarded to Regional Commissioner of Customs, New York, N.Y., March 28, 1974.

(J) *Flakes, trichlorophenol.*—Manufactured under section 1313 (b) by the Dow Chemical Co., Midland, Mich., with the use of tetrachlorobenzene.

Rate effective on articles manufactured on and after November 28, 1973, and exported on and after January 6, 1974.

Manufacturer's drawback statement of February 13, 1974, forwarded to Regional Commissioner of Customs, Chicago, Ill., March 1, 1974.

(K) *Mixes, cake.*—T.D. 72–121–G, as amended by T.D. 74–95–M, covering, among other things, food products manufactured by General Mills, Inc., Minneapolis, Minn., at its St. Charles, Chicago and West Chicago, Ill.; Toledo and Lancaster, Ohio; Minneapolis, Minn.; Buffalo, N.Y.; Cedar Rapids, Iowa; and Lodi, California, factories, with the use of wheat flour, dry egg whites and yolks, extra grade nonfat dry milk and other food preparation ingredients, further *amended* to cover cake mixes manufactured by the company under section 1313 (b) at the said factories, with the use of shortening containing lard derived from animal fats or hydrogenated vegetable fats or both.

Amendment effective on articles manufactured on and after August 15, 1971, and exported on and after October 15, 1971.

Amendment forwarded to Regional Commissioner of Customs, Chicago, Ill., April 4, 1974.

(L) *Omite Technical, and Omite 30W.*—T.D. 72–196–G, covering Omite (a wettable powder), manufactured under section 1313(b) by Uniroyal, Inc., Middlebury, Conn., at its factory located at Naugatuck, Conn., with the use of propargyl alcohol, *amended* to cover Omite Technical manufactured under section 1313(b) with the use of propargyl alcohol, and Omite 30W manufactured under section 1313 (b) by the said company at its above factory with the use of Omite Technical.

Amendment effective on Omite Technical manufactured and exported on and after May 4, 1971, and on Omite 30W manufactured and exported on and after April 1, 1973.

Manufacturer's supplemental statement of September 13, 1973, forwarded to Regional Commissioner of Customs, New York, N.Y., March 18, 1974.

(M) *Parts, barn cleaners and silo unloaders.*—T.D. 74–95–S, covering parts for barn cleaners and silo unloaders manufactured under

section 1313(b) by Graetz Manufacturing, Inc., Pound, Wis., with the use of hot rolled steel plate, angles and bar flats, *amended* to provide for a change in the effective date for manufacture of articles covered thereby from September 1, 1971, to June 1, 1971.

Supplemental statement of February 7, 1974, forwarded to Regional Commissioner of Customs, Chicago, Ill., February 19, 1974.

(N) *Piece goods, vinyl coated.*—Manufactured under section 1313 (b) by Pandel/Bradford, Inc., Lowell, Mass., with the use of cotton piece goods.

Rate effective on articles manufactured on and after May 1, 1973, and exported on and after June 20, 1973.

Manufacturer's drawback statement of February 25, 1974, forwarded to Regional Commissioner of Customs, New York, N.Y., March 14, 1974.

(O) *Plastic stabilizers.*—T.D. 73–88–AA, covering, among other things, plastic stabilizers manufactured under section 1313(b) by Cincinnati Milacron Chemicals Inc., Reading, Ohio, with the use of TO–8 material, is hereby *amended* to cover Advastab TM–187 (plastic stabilizers) manufactured by the company under section 1313(b) with the use of TO–8 material, and to cover Advastab TM–387 manufactured with the use of Advastab TM–187 material.

Amendment effective on articles manufactured on and after April 1, 1973, and exported on and after March 1, 1974.

Supplemental statement of March 14, 1974, forwarded to Regional Commissioner of Customs, Chicago, Ill., March 28, 1974.

(P) *Roll forgings and finished rolls.*—Roll forgings and finished rolls manufactured under section 1313(b) by Union Electric Steel Corp., Pittsburgh, Pa., at its Burgettstown and Carnegie, Pa., and Valparaiso, Ind., factories, with the use of high carbon ferrochromium.

Rate effective on articles manufactured on and after November 12, 1973, and exported on and after November 14, 1973.

Manufacturer's drawback statement of January 23, 1974, forwarded to Regional Commissioner of Customs, Baltimore, Md., March 18, 1974.

(Q) *Soft drinks, Mountain Dew and Diet Pepsi-Cola.*—T.D. 55275–B, as amended by T.D. 66–12–N, covering, among other things, canned Teem, Patio Orange, Patio Grape, and Patio Root Beer soft drinks manufactured under section 1313(b) by Pepsi-Cola Metropolitan

Bottling Co., Inc., Purchase, N.Y., at its Long Island City, N.Y., factory with the use of Teem, Patio Orange, Patio Grape, and Patio Root Beer bottling syrups, further *amended* to cover Mountain Dew and Diet Pepsi-Cola soft drinks manufactured under section 1313(b) by the said company at its above factory with the use of Mountain Dew and Diet Pepsi-Cola bottling syrups.

Amendment effective on articles as follows:

Mountain Dew soft drinks manufactured and exported on and after December 12, 1967;

Diet Pepsi-Cola soft drinks manufactured and exported on and after January 1, 1971.

Manufacturer's statement of July 31, 1973, forwarded to Regional Commissioner of Customs, New York, N.Y., January 11, 1974.

(R) *STA-LOK 485, AROGUM and HAMACO #10 (Nalcolyte 110A).*—T.D. 73-88-S, covering STA-LOK 400 modified potato starch manufactured under section 1313(b) by A. E. Staley Manufacturing Co., Decatur, Ill., at its Houlton, Me., factory, with the use of unmodified potato starch, *amended* to cover STA-LOK 485, AROGUM and HAMACO #10 (Nalcolyte 110A) manufactured under section 1313(b) by the said company at its above factory with the use of unmodified potato starch.

Amendment effective on articles manufactured and exported on and after February 29, 1972.

Manufacturer's supplemental statement of March 14, 1974, forwarded to Regional Commissioner of Customs, Boston, Mass., March 29, 1974.

(S) *Steel frames, welded, and steel components for loaders, dozers and aircraft tow tractors.*—Manufactured under section 1313(b) by Kewaunee Engineering Corp., Kewaunee, Wis., with the use of steel plate.

Rate effective on articles manufactured on and after January 22, 1971, and exported on and after February 27, 1973.

Manufacturer's statement of June 15, 1973, forwarded to Regional Commissioner of Customs, Chicago, Ill., January 10, 1974.

(T) *Tallow, rendered, refined, inedible; tankage, rendered dry.*—T.D. 55316-E, as amended, covering the allowance of drawback under

section 1313(b) on rendered refined inedible tallow and dry rendered tankage manufactured by Darling and Co., Chicago, Ill., at its Buffalo, N.Y., factory, with the use of unrendered inedible beef and mutton fats, unrendered inedible offal, derived principally from veal, lamb, and hog, unrendered inedible restaurant grease, principally of beef, veal, lamb, and hog, further *amended* to cover the foregoing products manufactured by the company under section 1313(b) at its Melvindale, Mich., factory, with the use of the stated merchandise.

Amendment effective on articles manufactured on and after August 26, 1970, and exported on and after December 1, 1970.

Manufacturer's supplemental statements of February 20 and November 21, 1973, forwarded to Regional Commissioner of Customs, Chicago, Ill., January 17, 1974.

(U) *Top rails, uprights, and metal walls for swimming pools.*—Manufactured under section 1313(b) by Oceanic Leisure Corp., Farmingdale, N.Y., with the use of low carbon steel.

Rate effective on articles manufactured on and after October 1, 1973, and exported on and after November 15, 1973.

Manufacturer's statements of October 31, 1973, forwarded to Regional Commissioner of Customs, New York, N.Y., December 27, 1973.

(V) *Tungsten rondelles.*—T.D. 56436–I, as amended by T.D.'s 66–230–B, 66–230–J, 69–218–R, and 74–95–Z, covering, among other things, sodium tungstate manufactured under section 1313(b) by M & R Refractory Metals, Inc., Winslow, N.J., with the use of ammonium paratungstate, further *amended* to cover tungsten rondelles manufactured by the company under section 1313(b) with the use of ammonium paratungstate.

Amendment effective on articles manufactured and exported on and after April 30, 1973.

Supplemental statement of March 15, 1974, forwarded to Regional Commissioner of Customs, New York, N.Y., April 2, 1974.

(W) *Wire and cable, insulated; and thin wall tubing.*—Manufactured under section 1313(b) by Haveg Industries, Inc., Wilmington, Del., at its Colchester, Vt., factory with the use of polytetrafluoroethylene resin (PTFE).

Rate effective on articles manufactured on and after November 1, 1970, and exported on and after November 2, 1970.

Manufacturer's statements of November 9, 1972, and February 1, 1974, forwarded to Regional Commissioner of Customs, Baltimore, Md., February 11, 1974.

(X) *Wool tops.*—Manufactured under section 1313(b) by Richard W. Wells Co., Inc., Boston, Mass., with the use of grease wool.

Rate effective on articles manufactured on and after December 20, 1973, and exported on and after December 28, 1973.

Manufacturer's statement of February 15, 1974, forwarded to Regional Commissioner of Customs, Boston, Mass., March 15, 1974.

(Y) *Yarn, polyester, bulked dyed.*—Manufactured under section 1313(b) by Olympia Industries, Inc., Spartanburg, S.C., at the corporation's factories located at Spartanburg, S.C., and Tuscaloosa, Ala., with the use of undyed bulked polyester yarn.

Rate effective on articles manufactured on and after February 1, 1973, and exported on and after September 12, 1973.

Manufacturer's drawback statement of December 6, 1973, forwarded to Regional Commissioner of Customs, New York, N.Y., January 31, 1974.

(Z) *Zinc rich primer.*—Manufactured under section 1313(b) by W. C. Richards Co., Blue Island, Ill., with the use of zinc dust.

Rate effective on articles manufactured on and after January 2, 1971, and exported on and after September 21, 1972.

Manufacturer's statements of July 25, and November 29, 1973, forwarded to Regional Commissioner of Customs, Chicago, Ill., December 12, 1973.

Decisions of the United States Customs Court

Customs Decisions

(C.D. 4521)

AMTHOR IMPORTS *v.* UNITED STATES

Bar sets

Court No. 65/12100

Port of San Francisco

[Judgment for plaintiff.]

(Decided April 22, 1974)

Glad & Tuttle (*John McDougall* of counsel) for the plaintiff.
Carla A. Hills, Assistant Attorney General (*James Caffentzis*, trial attorney), for the defendant.

RICHARDSON, Judge: The merchandise at bar, consisting of bar sets, was classified in liquidation under items 651.75, 650.21, and

650.49, TSUS, at the duty rates of 24.7 and 26.4 *per centum ad valorem*. It is claimed by the plaintiff-importer that the merchandise should be classified as sets under items 651.75 and 650.21 or 650.49, TSUS, at the duty rate of 1 cent each plus 17.5 *percentum ad valorem*.

In its complaint plaintiff alleges, among other things, that the subject merchandise is similar in all material respects to the merchandise the subject of *Import Associates of America, Fraser's Inc.* v. *United States*, 56 CCPA 100, C.A.D. 961 (1969), and further, requests that judgment issue directing the district director to reliquidate the involved entry or entries under items 651.75 and 650.21 or 650.49, TSUS, in accordance with its claim. In its answer the defendant admits all of the allegations of the complaint, and consents to the entry of judgment overruling the manner of assessment of duty by the district director and sustaining plaintiff's claim as to the bar sets.

In the case cited in the complaint the merchandise consisted of flatware sets of various kinds of knives, forks, and spoons imported from West Germany and Japan, classified in liquidation under item 651.75, TSUS, among other things, and assessed with duty at the *ad valorem* equivalent of the highest specific or compound rate applicable to any article in the set. The Customs Court sustained the protest lodged against the duty assessment, and held that the specific or compound rate of duty which is the highest for any article in the set if imported alone should be used in determining the duty and not the *ad valorem* equivalent, and further, that the applicable specific duty should be assessed against each article in the set. This latter holding of the Customs Court was sustained in the cited case on appeal to the Court of Customs and Patent Appeals as against the importer's contention in the appellate court that the specific duty assessment should be made against the set rather than against each article in the set.

In the instant case defendant admits that the merchandise at bar is similar in all material respects to the merchandise the subject of the cited case. Consequently, inasmuch as the pleadings fail to raise any triable issue in the case the necessity for further proceedings in this action is obviated.

Plaintiff's claim for classification of the subject merchandise under items 651.75 and 650.21 or 650.49, TSUS, as sets at the duty rate of 1 cent each plus 17.5 *per centum ad valorem* is sustained. Judgment will be entered herein accordingly.

(C.D. 4522)

AVINS INDUSTRIAL PRODUCTS CO. *v.* UNITED STATES

Memorandum to Accompany Order

Court No. 72-3-00709

Port of New York on metal products

[Motion for rehearing denied.]

(Dated April 23, 1974)

Donohue and Shaw (*Charles P. Deem* of counsel) for the plaintiff.
Carla A. Hills, Assistant Attorney General (*Joseph I. Liebman*, trial attorney), for the defendant.

RAO, Judge: In this motion for an order granting a rehearing, setting aside the order of dismissal, restoring the action, and rendering judgment for the plaintiff, it is claimed that the decision in *John V. Carr & Son, Inc.* v. *United States*, 72 Cust. Ct. —, C.D. 4500 (1974) should be given careful consideration and controlling effect herein.

In the instant case it was held that wire, cut to length and in certain dimensions making it particularly adaptable for use in producing radio antennas, was material and not a part, finished or unfinished, and was classifiable as wire under the definition in headnote 3(i), schedule 6, part 2B, Tariff Schedules of the United States.[1] The court considered the difficulty in drawing a line between material and unfinished articles or parts and concluded that Congress had in this instance drawn the line itself and intended that wire, no further processed than cut to length, be classed as wire. *Avins Industrial Products Co.* v. *United States*, 72 Cust. Ct. —, C.D. 4503 (1974).

In the *Carr* case, the merchandise consisted of rails, measuring 53 feet in length, angular in shape, with two curves called stiffening ribs, and flanges on either end to enable them to fit flush with the curvature of the railroad car. They were dedicated for use and used solely as parts of railroad cars.

The court held they were properly classified by customs officials as parts of railroad cars rather than as angles, shapes and sections. The

[1] 3. Forms and Condition of Iron or Steel. * * *

* * * * * * * *

(i) Wire: A finished, drawn, non-tubular product, of any cross-sectional configuration, in coils or cut to length, and not over 0.703 inch in maximum cross-sectional dimension. The term also includes a product of solid rectangular cross section, in coils or cut to length, with a cold-rolled finish, and not over 0.25 inch thick and not over 0.50 inch wide.

court quoted from *The Servco Company* v. *United States*, 68 Cust. Ct. 83, C.D. 4341 (1972), *aff'd* 60 CCPA 137, C.A.D. 1098, 477 F. 2d 479 (1973), wherein it was stated that headnote 1(iv), schedule 6, part 2,[2] excluded from that part identifiable parts solely or chiefly used as a part of an article provided for in the tariff schedules. It then said:

> The considerations deemed controlling in *Servco* are equally applicable here. Thus, in the present case, the rails in question had been advanced in their manufacture to such a point that after importation no further processing was required to save for welding intermediate gussets to their inside to stiffen them and for occasionally trimming between a half-inch or inch of excess metal from the edge. In short, in their imported condition, the involved rails were virtually ready for use only as a part of the railroad stock described in item 690.15 requiring as they did merely insubstantial further processing. Put otherwise, the imported rails had been so far processed toward their completed form as a part of a railroad car as to be dedicated to the making of that article alone. * * *
>
> Added to this, plaintiff has conceded that at the time of importation and immediately prior thereto, the imported merchandise was used only for incorporation into railroad cars. * * *

The court pointed out that, on the other hand,

> if in its imported condition, an angle, shape or section has been processed or advanced in manufacture only to a point where substantial additional processing is necessary before it can be used as a part of a given article, the import would not be classifiable as a "part," but rather would be considered a material and thus (if meeting the other statutory requirements) classifiable under a provision for angles, shapes and sections. * * *

Both cases involved the issue, at what point does a material become an unfinished part?

The instant case is distinguishable from the *Carr* case on two grounds: (1) As stated in the original decision (C.D. 4503), it is not clear from the stipulated facts that the imported wire was incapable of being made into more than one article so as to fix its status as a part, and (2) the statutory definition of wire is an indication that Congress intended that wire cut to length but not further advanced be treated as material and not an unfinished part.

The court did not disregard headnote 1(iv), schedule 6, part 2, as plaintiff claims. It noted the difficulty of drawing the line between material and unfinished parts and held that Congress in defining wire in headnote 3(i), schedule 6, part 2B intended that wire cut to length should be classed as wire (a material) and not as an unfinished part.

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[2] 1. * * * This part does not include—

* * * * * * *

(iv) other articles specially provided for elsewhere in the tariff schedules, or parts of articles.

It may be doubted that wire is ever ordered cut to a particular length without a predetermined purpose in mind.[3] Therefore, under plaintiff's theory, it would be necessary to decide in each instance whether the wire was to be chiefly used as part of a particular article. The result could be a different rate of duty on importations of the same or practically the same merchandise. By including wire cut to length in the definition of wire, Congress intended to prevent such a result and to simplify customs administration.

The motion is denied.

(C.D. 4523)

AMTHOR IMPORTS *v.* UNITED STATES

Flatware sets

Court No. 65/12037

Port of San Francisco

[Judgment for plaintiff.]

(Decided April 23, 1974)

Glad & Tuttle (*John McDougall* of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (*James Caffentzis*, trial attorney), for the defendant.

RICHARDSON, Judge: The merchandise at bar, consisting of flatware sets, was classified in liquidation under items 651.75, 927.53 and 927.54, TSUS, at the duty rate of 124.6 *per centum ad valorem*. It is claimed by the plaintiff-importer that the merchandise should be classified as sets under items 651.75 and 927.53 or 927.54, TSUS, at the duty rate of 3 cents each plus 67.5 *per centum ad valorem*.

In its complaint plaintiff alleges, among other things, that the subject merchandise is similar in all material respects to the merchandise the subject of *Import Associates of America, Fraser's Inc.* v. *United States*, 56 CCPA 100, C.A.D. 961 (1969), and further, requests that judgment issue directing the district director to reliquidate the involved entry or entries under items 651.75 and 927.53 or 927.54, TSUS, in accordance with its claim. In its answer the defendant admits all of the allegations of the complaint, and consents to the entry of judgment

[3] Cf. the following stipulated fact:

15. That "wire", which is a finished, drawn, non-tubular product, not over 0.703 inch in maximum cross-sectional configuration and which has been cut to length is sometimes so cut because the ultimate customer intends to utilize that length, without further cutting, in a predetermined manner.

overruling the manner of assessment of duty by the district director and sustaining plaintiff's claim as to the flatware sets.

In the case cited in the complaint the merchandise consisted of flatware sets of various kinds of knives, forks, and spoons imported from West Germany and Japan, classified in liquidation under item 671.75, TSUS, among other things, and assessed with duty at the *ad valorem* equivalent of the highest specific or compound rate applicable to any article in the set. The Customs Court sustained the protest lodged against the duty assessment, and held that the specific or compound rate of duty which is the highest for any article in the set if imported alone should be used in determining the duty and not the *ad valorem* equivalent, and further, that the applicable specific duty should be assessed against each article in the set. This latter holding of the Customs Court was sustained in the cited case on appeal to the Court of Customs and Patent Appeals as against the importer's contention in the appellate court that the specific duty assessment should be made against the set rather than against each article in the set.

In the instant case defendant admits that the merchandise at bar is similar in all material respects to the merchandise the subject of the cited case. Consequently, inasmuch as the pleadings fails to raise any triable issue in the case the necessity for further proceedings in this action is obviated.

Plaintiff's claim for classification of the subject merchandise under items 651.75 and 927.53 or 927.54, TSUS, as sets at the duty rate of 3 cents each plus 67.5 *per centum ad valorm* is sustained. Judgment will be entered herein accordingly.

(C.D. 4524)

AMTHOR IMPORTS *v.* UNITED STATES

Bar sets

Court No. 65/16448

Port of San Francisco

[Judgment for plaintiff.]

(Decided April 23, 1974)

Glad & Tuttle (*George R. Tuttle* of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (*James Caffentzis*, trial attorney), for the defendant.

RICHARDSON, Judge: The merchandise at bar, consisting of bar sets, was classified in liquidation under items 651.75 and 650.21, TSUS,

at the duty rate of 24.2 *per centum ad valorem*. It is claimed by the plaintiff-importer that the merchandise should be classified as sets under items 651.75 and 650.21, TSUS, at the duty rate of 1 cent each plus 17.5 *per centum ad valorem*.

In its complaint plaintiff alleges, among other things, that the subject merchandise is similar in all material respects to the merchandise the subject of *Import Associates of America, Fraser's Inc.* v. *United States*, 56 CCPA 100, C.A.D. 961 (1969), and further, requests that judgment issue directing the district director to reliquidate the involved entry or entries under items 651.75 and 650.21, TSUS in accordance with its claim. In its answer the defendant admits all of the allegations of the complaint, and consents to the entry of judgment overruling the manner of assessment of duty by the district director and sustaining plaintiff's claim as to the bar sets.

In the case cited in the complaint the merchandise consisted of flatware sets of various kinds of knives, forks, and spoons imported from West Germany and Japan, classified in liquidation under item 651.75, TSUS, among other things, and assessed with duty at the *ad valorem* equivalent of the highest specific or compound rate applicable to any article in the set. The Customs Court sustained the protest lodged against the duty assessment, and held that the specific or compound rate of duty which is the highest for any article in the set if imported alone should be used in determining the duty and not the *ad valorem* equivalent, and further, that the applicable specific duty should be assessed against each article in the set. This later holding of the Customs Court was sustained in the cited case on appeal to the Court of Customs and Patent Appeals as against the importer's contention in the appellate court that the specific duty assessment should be made against the set rather than against each article in the set.

In the instant case defendant admits that the merchandise at bar is similar in all material respects to the merchandise the subject of the cited case. Consequently, inasmuch as the pleadings fail to raise any triable issue in the case the necessity for further proceedings in this action is obviated.

Plaintiff's claim for classification of the subject merchandise under items 651.75 and 650.21, TSUS, as sets at the duty rate of 1 cent each plus 17.5 *per centum ad valorem* is sustained. Judgment will be entered herein accordingly.

537-665—74——5

(C.D. 4525)

AMTHOR IMPORTS *v.* UNITED STATES

Dessert and bar sets

Court No. 66/2236

Port of San Francisco

[Judgment for plaintiff.]

(Decided April 23, 1974)

Glad & Tuttle (*John McDougall* of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (*James Caffentzis*, trial attorney), for the defendant.

RICHARDSON, Judge: The merchandise at bar, consisting of dessert and bar sets, was classified in liquidation under items 651.75, 650.49, and 650.21, TSUS, at the duty rates of 22.87, 27.71, and 25.73 *per centum ad valorem*. It is claimed by the plaintiff-importer that the merchandise should be classified as sets under items 651.75 and 650.49 or 650.21, TSUS, at the duty rate of 1 cent each plus 17.5 *per centum ad valorem*.

In its complaint plaintiff alleges, among other things, that the subject merchandise is similar in all material respects to the merchandise the subject of *Import Associates of America, Fraser's Inc.* v. *United States*, 56 CCPA 100, C.A.D. 961 (1969), and further, requests that judgment issue directing the district director to reliquidate the involved entry or entries under items 651.75 and 650.49 or 650.21, TSUS, in acordance with its claim. In its answer the defendant admits all of the allegations of the complaint, and consents to the entry of judgment overruling the manner of assessment of duty by the district director and sustaining plaintiff's claim as to the dessert and bar sets.

In the case cited in the complaint the merchandise consisted of flatware sets of various kinds of knives, forks, and spoons imported from West Germany and Japan, classified in liquidation under item 651.75, TSUS, among other things, and assessed with duty at the *ad valorem* equivalent of the highest specific or compound rate applicable to any article in the set. The Customs Court sustained the protest lodged against the duty assessment, and held that the specific or compound rate of duty which is the highest for any article in the set if imported along should be used in determining the duty and not the *ad valorem* equivalent, and further, that the applicable specific duty should be assessed against each article in the set. This latter hold-

ing of the Customs Court was sustained in the cited case on appeal to the Court of Customs and Patent Appeals as against the importer's contention in the appellate court that the specific duty assessment should be made against the set rather than against each article in the set.

In the instant case defendant admits that the merchandise at bar is similar in all material respects to the merchandise the subject of the cited case. Consequently, inasmuch as the pleadings fail to raise any triable issue in the case the necessity for further proceedings in this action is obviated.

Plaintiff's claim for classification of the subject merchandise under items 651.75 and 650.49 or 650.21, TSUS, as sets at the duty rate of 1 cent each plus 17.5 *per centum ad valorem* is sustained. Judgment will be entered herein accordingly.

(C.D. 4526)

GAF CORPORATION *v.* UNITED STATES

Projection lenses

Merchandise failing to conform to sample or specifications may be entitled to drawback upon strict compliance with section 313(c), Tariff Act of 1930, as amended, and the implementing customs regulations.

Failure to return merchandise within 90 days or to request an extension of time is failure to effect such compliance.

Approval of a request for drawback does not constitute a waiver of the requisites for an extension of time as prescribed by 19 C.F.R. § 22.33.

Court No. 67/49707

Port of Portland, Oreg.

[Judgment for defendant.]

(Decided April 24, 1974)

Glad, Tuttle & White (*John McDougall* of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (*Robert B. Silverman* and *Andrew P. Vance*, trial attorneys) for the defendant.

FORD, Judge: This action challenges the propriety of customs in denying a drawback allowance on certain projection lenses. The merchandise in question is covered by two entries which were released to the importer on July 20, 1965 (entry 539) and July 29, 1965 (entry

769). The lenses were found not to conform to specifications and were returned to customs custody on December 22, 1965. The merchandise was laden on the SS Canada Mail under customs supervision on January 7, 1966 according to customs form 7539 forming part of the official papers which were received in evidence without being marked.

Drawback was denied by virtue of plaintiff's failure to return the merchandise to customs within 90 days of its release as required by section 313(c), Tariff Act of 1930, as amended, and by Customs Regulation § 22.33, or being granted permission for an extension of time to make such return as provided for in said regulation, *supra*.

The pertinent provisions of the statutes and regulations provide as follows:

Section 313, Tariff Act of 1930, 46 Stat. 694, as amended, 67 Stat. 515 (1953):

> (c) MERCHANDISE NOT CONFORMING TO SAMPLE OR SPECIFICATIONS.—Upon the exportation of merchandise not conforming to sample or specifications or shipped without the consent of the consignee upon which the duties have been paid and which have been entered or withdrawn for consumption and, within ninety days after release from customs custody, unless the Secretary authorizes in writing a longer time, returned to customs custody for exportation, the full amount of the duties paid upon such merchandise shall be refunded as drawback, less 1 per centum of such duties.
>
> * * * * * * *
>
> (i) REGULATIONS.—Allowance of the privileges provided for in this section shall be subject to compliance with such rules and regulations as the Secretary of the Treasury shall prescribe, which may include, but need not be limited to, the fixing of a time limit within which drawback entries or entries for refund under any of the provisions of this section or section 309(b) of this Act shall be filed and completed, and the desigation of the person to whom any refund or payment of drawback shall be made.

19 C.F.R. § 22.31:

> Drawback allowance.
>
> Upon the exportation of imported mechandise not conforming to sample or specifications or shipped without the consent of the consignee, the duties paid thereon, less 1 percent, shall be refunded as drawback in accordance with the provisions of section 313(c), Tariff Act of 1930, as amended, subject to compliance with the regulations in §§ 22.32 to 22.35. [Footnote omitted.]

19 C.F.R. § 22.33:

> Return of merchandise to customs custody.
>
> (a) Upon receipt of the drawback entry, the collector shall assign a number thereto, by appropriate notation on all copies,

approve the place of deposit of the merchandise specified by the person making the entry or designate another place if that one is not deemed suitable, and return the original to the entrant for presentation with the merchandise to the customs officer at the place of deposit. The merchandise shall be delivered into customs custody at such place within 90 days after the date on which it was originally released from customs custody unless, either before or after the return of the merchandise, a longer time is specifically authorized by the Bureau, or by the collector under the authority of this paragraph. The collector, upon written application, may extend the period in those cases where he is satisfied that the importer has been or will be prevented by circumstances beyond his control from returning the merchandise within the 90-day period, and that the importer proposes to return, or has returned, the merchandise within a reasonable time. Applications for extension of time shall be filed with, and acted upon by, the collector of customs at the port where the drawback entry will be filed. If the merchandise is to be exported otherwise than by mail, one copy of the entry shall be returned to the entrant, for resubmission to the collector in accordance with paragraph (e) of this section. A receipt showing the fact and date of such delivery shall be furnished to the applicant if he requests it. If the report of the receiving officer shows that the merchandise was not returned to customs custody within the time required by law, the drawback shall be denied.

The record in this case consists of the testimony of two witnesses called on behalf of plaintiff and one witness called on behalf of defendant. The official papers were received in evidence without being marked and a letter indicating the form of request for extension of time ordinarily used by the broker in drawback cases was received as plaintiff's exhibit 1. The exhibit contained a request for an extension of time, and the reason for the request. Approval was given by customs officials for the extension of time requested therein. The parties also entered into a stipulation agreeing to the change of name of plaintiff from Sawyer's, Inc. to GAF Corporation due to the sale of the importing corporation to GAF Corporation.

The factual situation involved herein is not in dispute. The merchandise was released from customs custody on July 20, 1965, and July 29, 1965, and was returned to customs with a drawback entry on December 22, 1965. The appraiser's report on the drawback entry establishes the merchandise did not conform to sample or specifications and was laden on the SS Canada Mail on January 7, 1966 under customs supervision.

Whether there was compliance with Customs Regulation § 22.33, which requires return of the merchandise within 90 days from its release, or a request for an extension of time, is the basic issue before the court. There is no dispute that the importer wrote a letter to its broker

on October 21, 1965 and that the broker sent a letter to customs on October 27, 1965, as indicated by the following:

SAWYER'S
SAWYER'S INC.
Portland, Oregon 97207
Quality Picture Products
Phone: MItchell 4–1181–
Area Code 503
October 21, 1965

George S. Bush & Co., Inc.
211–217 Board of Trade Bldg.
Portland, Oregon
Attention: Mr. Ben Ellis

Dear Ben:

Reference: Customs Entry No. 539 dated July 12, 1965
Customs Entry No. 769 dated July 19, 1965

We would appreciate your obtaining permission from U.S. Customs to return 1,000 Projection Lenses to our supplier, Yoshida Industry Co., Ltd., Japan on a duty drawback basis. The return will be covered under the following two entries: Customs Entry No. 539, dated July 12, 1965 totals 455 projection lenses and under Customs Entry No. 769 dated July 19, 1965 the return will be 545 projection lenses.

As soon as you obtain permission for the return, please let us know so that we can prepare the lenses for shipment.

Cordially,
SAWYER'S INC.
Frank M. McAnulty
Export Traffic Manager

GEO. S. BUSH & CO., INC. CUSTOM HOUSE BROKERS, FORWARDING AGENTS—211–217 BOARD OF TRADE BUILDING, PORTLAND OREGON 97204.

October 27, 1965

Collector of Customs
Portland
Oregon

Madam:

We enclose herewith a copy of a letter received from Sawyer's Inc. requesting permission to export under drawback 1,000 Projection Lenses imported from Yoshida Industry Co., Ltd.

As soon as your approval of this request is forthcoming we will arrange for shipment to Japan.

Yours very truly,
GEO. S. BUSH & Co., INC.
B. J. Ellis

BJE/pa
Encl.
APPROVED:
L. Antonelli

Do these letters constitute a request for an extension of time as set forth in Customs Regulation § 22.33? I think not. The regulation specifically provides for return of the merchandise within 90 days of release. This was not done as the merchandise was admittedly returned on December 22, 1965. A longer period of time is permitted "upon written application" where "he is satisfied that the importer has been or will be prevented by circumstances beyond his control from returning the merchandise within the 90-day period." The letters of October 21, 1965 and October 27, 1965 do not in my opinion constitute such a request. No mention of extension of time is contained in either letter nor is there any statement which would satisfy the customs official that the delay was beyond the importer's control. The signature of Mr. Antonelli under "APPROVED" was merely an approval of the request for drawback made in the letter. Mr. Antonelli admitted that he was aware at the time he approved the request that additional time would be required but his approval was for drawback not for an extension of time. The witness indicated he had no authority to refuse a request for drawback. Ordinarily, according to Mr. Antonelli, request for drawback is not made but there are instances where the importer will alert customs that drawback will be requested.

The provisions for drawback are not a right but a privilege accorded to an importer requiring strict compliance with the statutory provisions and the regulations. Such compliance is mandatory. *Swan and Finch Company* v. *United States*, 190 U.S. 143 (1903); *Campbell* v. *United States*, 107 U.S. 407 (1883); *United States* v. *W. C. Hardesty Co., Inc.*, 36 CCPA 47, C.A.D. 396 (1949); *Swan Tricot Mills Corp.* v. *United States*, 63 Cust. Ct. 530, C.D. 3948 (1969).

Plaintiff contends the approval granted under its letter of October 27, 1965, was a waiver of the form of request for an extension of time.

In *The Josebra Company* v. *United States*, 29 Cust. Ct. 244, C.D. 1476 (1952), *aff'd* 41 CCPA 206, C.A.D. 552 (1954), the court cited with approval the discussion of waiver in Volume 56, American Jurisprudence:

> The essential elements of a waiver, within the definitions already given, are the existence, at the time of the alleged waiver, of a right, advantage, or benefit, the knowledge, actual or constructive, of the existence thereof, and an intention to relinquish such right, advantage, or benefit. [Sec. 12.]

In order to waive, the party doing so must have knowledge of what he is waiving. Mr. Antonelli testified he approved the request to file a drawback entry. Neither the intent of Mr. Antonelli in approving the request nor the contents of the letters would amount to a waiver of the form of a request for the extension of time required in this instance. The customs officials were under no obligation to advise the importer or as in this case a duly licensed customhouse broker that an extension of time would be required under the circumstances.

In view of the foregoing, plaintiff having failed to comply with the statutory provisions and the implementing customs regulations the claim of plaintiff is overruled and the action is dismissed.

Judgment will be entered accordingly.

(C.D. 4527)

AMTHOR IMPORTS *v.* UNITED STATES

Salad service sets

Court No. 66/75845

Port of San Francisco

[Judgment for plaintiff.]

(Decided April 24, 1974)

Glad & Tuttle (*John McDougall* of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (*James Caffentzis*, trial attorney), for the defendant.

RICHARDSON, Judge: The merchandise at bar, consisting of salad service sets, was classified in liquidation under items 651.75 and 927.53, TSUS, at the duty rate of 92.4 *per centum ad valorem*. It is claimed by the plaintiff-importer that the merchandise should be classified as sets under items 651.75 and 927.53, TSUS, at the duty rate of 3 cents each plus 67.5 *per centum ad valorem*.

In its complaint plaintiff alleges, among other things, that the subject merchandise is similar in all material respects to the merchandise the subject of *Import Associates of America, Fraser's Inc.* v. *United States*, 56 CCPA 100, C.A.D. 961 (1969), and further, requests that judgment issue directing the district director to reliquidate the in-

volved entry or entries under items 651.75 and 927.53, TSUS, in accordance with its claim. In its answer the defendant admits all of the allegations of the complaint, and consents to the entry of judgment overruling the manner of assessment of duty by the district director and sustaining plaintiff's claim as to the salad service sets.

In the case cited in the complaint the merchandise consisted of flatware sets of various kinds of knives, forks, and spoons imported from West Germany and Japan, classified in liquidation under item 651.75, TSUS, among other things, and assessed with duty at the *ad valorem* equivalent of the highest specific or compound rate applicable to any article in the set. The Customs Court sustained the protest lodged against the duty assessment, and held that the specific or compound rate of duty which is the highest for any article in the set if imported alone should be used in determining the duty and not the *ad valorem* equivalent, and further, that the applicable specific duty should be assessed against each article in the set. This latter holding of the Customs Court was sustained in the cited case on appeal to the Court of Customs and Patent Appeals as against the importer's contention in the appellate court that the specific duty assessment should be made against the set rather than against each article in the set.

In the instant case defendant admits that the merchandise at bar is similar in all material respects to the merchandise the subject of the cited case. Consequently, inasmuch as the pleadings fail to raise any triable issue in the case the necessity for further proceedings in this action is obviated.

Plaintiff's claim for classification of the subject merchandise under items 651.75 and 927.53, TSUS, as sets at the duty rate of 3 cents each plus 67.5 *per centum ad valorem* is sustained. Judgment will be entered herein accordingly.

(C.D. 4528)

AMTHOR IMPORTS *v.* UNITED STATES

Bar sets

Court No. 67/23596

Port of San Francisco

[Judgment for plaintiff.]

(Decided April 24, 1974)

Glad & Tuttle (*John McDougall* of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (*James Caffentzis*, trial attorney), for the defendant.

RICHARDSON, Judge: The merchandise at bar, consisting of bar sets, was classified in liquidation under items 651.75 and 650.49, TSUS,

at the duty rate of 27.17 *per centum ad valorem*. It is claimed by the plaintiff-importer that the merchandise should be classified as sets under items 651.75 and 650.49, TSUS, at the duty rate of 1 cent each plus 17.5 *per centum ad valorem*.

In its complaint plaintiff alleges, among other things, that the subject merchandise is similar in all material respects to the merchandise the subject of *Import Associates of America, Fraser's Inc.* v. *United States*, 56 CCPA 100, C.A.D. 961 (1969), and further, requests that judgment issue directing the district director to reliquidate the involved entry or entries under items 651.75 and 650.49, TSUS, in accordance with its claim. In its answer the defendant admits all of the allegations of the complaint, and consents to the entry of judgment overruling the manner of assessment of duty by the district director and sustaining plaintiff's claim as to the bar sets.

In the case cited in the complaint the merchandise consisted of flatware sets of various kinds of knives, forks, and spoons imported from West Germany and Japan, classified in liquidation under item 651.75, TSUS, among other things, and assessed with duty at the *ad valorem* equivalent of the highest specific or compound rate applicable to any article in the set. The Customs Court sustained the protest lodged against the duty assessment, and held that the specific or compound rate of duty which is the highest for any article in the set if imported alone should be used in determining the duty and not the *ad valorem* equivalent, and further, that the applicable specific duty should be assessed against each article in the set. This latter holding of the Customs Court was sustained in the cited case on appeal to the Court of Customs and Patent Appeals as against the importer's contention in the appellate court that the specific duty assessment should be made against the set rather than against each article in the set.

In the instant case defendant admits that the merchandise at bar is similar in all material respects to the merchandise the subject of the cited case. Consequently, inasmuch as the pleadings fail to raise any triable issue in the case the necessity for further proceedings in this action is obviated.

Plaintiff's claim for classification of the subject merchandise under items 651.75 and 650.49, TSUS, as sets at the duty rate of 1 cent each plus 17.5 *per centum ad valorem* is sustained. Judgment will be entered herein accordingly.

(C.D. 4529)

SQUAW VALLEY DEVELOPMENT COMPANY *v.* UNITED STATES

Towers

SUPPORT STRUCTURES—UNFINISHED OR UNASSEMBLED ARTICLES—ESSENTIAL PART MISSING

Structural steel shapes imported at Los Angeles, Calif. from West Germany and classified in liquidation under TSUS item 652.98 as structures and parts of structures, other, were claimed by the importer to be properly classifiable under the provision for lifting machinery and parts thereof in TSUS item 664.10 as part of a substantially complete article in unassembled condition in accordance with General Interpretative Rule 10(h).

The record shows that the disputed merchandise formed lattice towers when assembled that were used as the support structures for a "gondola car" type of ski lift system which was constructed at Squaw Valley, Calif., that neither of the two entries before the court covered sufficient parts independent of each other to form complete towers, and that the "gondola cars" were not included in the importations in issue.

Held, the disputed merchandise is not classifiable as claimed since it was not part of a substantially complete ski lift in unassembled condition inasmuch as an essential part, namely, the "gondola cars", were not included in the importations in issue. *Authentic Furniture Products, Inc.* v. *United States*, 61 CCPA C.A.D. 1109, 486 F.2d 1062 (1973) followed.

Court No. 67/79753(B)

Port of San Francisco

[Judgment for defendant.]

(Decided April 25, 1974)

Glad, Tuttle & White (*John McDougall* of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (*Michael S. O'Rourke*, trial attorney), for the defendant.

RICHARDSON, Judge: The merchandise in this case, exported from West Germany in August and September of 1963, is described on the consumption entries as "STRUCTURAL SHAPES OF IRON OR STEEL" [entry 21559] and as "STRUCTURAL SHAPES OTHER THEN [sic] ALLOY IRON OR STEEL" [entry 27838]. The merchandise was classified in liquidation upon entry at the port of San Francisco, Calif. under TSUS item 652.98 as structures and parts of structures of base metal, other,

at the duty rate of 19 *per centum ad valorem*. The plaintiff-importer claims that the merchandise is properly classifiable under TSUS item 664.10 as parts of "elevators or other lifting machinery" at the duty rate of 10.5 *per centum ad valorem*.

The competing tariff provisions read:

[classified]		
	Hangars and other buildings, bridges, bridge sections, lock-gates, towers, lattice masts, roofs, roofing frameworks, door and window frames, shutters, balustrades, columns, pillars, and posts, and other structures and parts of structures, all the foregoing of base metal:	
	Of iron or steel:	
	* * * * * * *	
652.98	Other	19% ad val.
[claimed]		
664.10	Elevators, hoists, winches, cranes, jacks, pulley tackle, belt conveyors, and other lifting, handling, loading, or unloading machinery, and conveyors, all the foregoing and parts thereof not provided for in item 664.05	10.5% ad val.

According to the evidence in the case the imported articles in dispute, along with other articles, were utilized in the construction of a ski lift at Squaw Valley, California, which went into operation in December of 1963, featuring, as one witness put it, "an aerial passenger tramway that consisted of 23 support structures, 18,000 feet of endless cable, 79 gondola cars." And the disputed articles, when assembled at the construction site, constituted the support structures for that ski lift system.

At the trial testimony was elicited from two witnesses employed by plaintiff who were present when the ski lift was constructed. One witness, Hans von Nolde, was employed in the field of public relations, publicity, marketing, and advertising; and the other witness, John T. Buchman, was employed as general manager, and was also plaintiff's secretary and treasurer. These witnesses, although possessing no engineering degrees, were said to be familiar with the erection and operation of ski lifts from their personal experience and association with plaintiff. They testified as to construction details and administrative matters relating to the ski lift. Buchman and von Nolde referred to the disputed articles (when assembled) as "towers". And each was of the opinion that the "tower heads" would be of no use to plaintiff without the additional equipment that was added to them.

Testimony was also elicited from Humphries Miller Walton, a civil engineer in the employ of the American Bridge Division of the United States Steel Corporation. Mr. Walton identified the merchandise in issue as constituting (when assembled) lattice-type towers made of standard roll sections bolted together with a tower head composed of riverted sections with weldment at the top. The witness included the tower head in the concept of "tower", but excluded from this concept the sheave assemblies which are attached to the tower head in the Squaw Valley installation. Mr. Walton testified that the disputed articles (when assembled) conform to the industry definition of a "tower", and are similar to towers made by his employer. He also testified that with slight modification the disputed articles could be used as floodlight or microwave towers. And the witness stated that other uses for lattice towers included electrical transmission towers, substation towers, and towers for personnel conveyance.

Plaintiff argues that the inclusion of tower heads and sheave assemblies in the imported support structures rendered the disputed articles something more than "towers", and, therefore, beyond classification under item 652.98 under the *eo nomine* provision for towers. Plaintiff also contends that the support structures in combination with sheave assemblies, endless cable, and consoles constitute an unassembled and substantially complete ski lift.

With respect to plaintiff's first argument, it is to be noted that the disputed merchandise was not classified under the *eo nomine* provision for "towers" in item 652.98 for the reason, as defendant points out in the brief, that neither of the two entries before the court contained sufficient structural shapes and parts to form complete towers independent of the merchandise covered by the other entry. Consequently, plaintiff's "more than a tower" argument is misplaced inasmuch as the question presented under the instant facts is not whether the disputed merchandise constitutes "towers", but rather whether the merchandise in issue constitutes structures and parts of structures within the ambit of item 652.98. And plaintiff has not addressed itself to this question in its briefs. As such, the court fully agrees with defendant when it says in its brief (p. 18) "plaintiff has not shown how the protested merchandise, not a combination of non-protested and protested merchandise, is anything more than structural steel shapes that when assembled, as in this case, result in a tower."

With respect to plaintiff's second argument, the court is of the opinion that this argument suffers from essentially the same deficiency which characterized palintiff's first argument. In addition to the entry parts deficiency noted herein with regard to the "towers", each of the two entries before the court also lacked sufficient parts to constitute a substantially complete ski lift in unassembled condition.

According to the official papers received in evidence at the trial, entry 21559, entered September 17, 1963, covered 191 packages consisting of electrical parts, wire rope, and structural shapes while entry 27838, entered October 28, 1963, covered 43 packages consisting of electrical and structural parts. However, neither of these entries covered the "gondola" cars which were mentioned in the testimony of witnesses as being part of this lift system at Squaw Valley. Consequently, on this record it would have been improper for the customs officials at the port of entry to have entertained a "substantially complete article" classification for the disputed merchandise in terms of a ski lift in view of the omitted "gondola" cars. *Authentic Furniture Products, Inc.* v. *United States*, 61 CCPA —, C.A.D. 1109, 486 F. 2d 1062 (1973).

In C.A.D. 1109 cited by the defendant the merchandise was wooden headboards, footboards, posts, ladders, and guardrails of bunk bed units imported minus siderails which were classified as parts of furniture under TSUS item 727.40, as modified, and claimed by the importer to be properly classifiable under TSUS item 727.35, as modified, as furniture other than chairs, in accordance with General Interpretative Rule 10(h).[1] The customs court found the bunk bed units not to be a substantially complete article in their imported condition, and, accordingly, overruled the protest. In sustaining the lower court our appeals court said:

> Considering as we must, however, the goods in their imported form, we find the missing siderails to be an essential item. We thus find no basis for overturning the lower court's finding that the imported pieces constituted less than a substantially complete bunk bed. We consider the application of the test, whereby the absence of a substantial or essential part precludes classification as the unfinished article itself, to be well founded in the case law so ably discussed by the lower court and aptly followed in the present case.

In the instant case there can be no doubt that the absence of "gondola" cars vitiates any classification claim for substantial completeness of a ski lift at Squaw Valley incorporating the merchandise in issue. Indeed, plaintiff's definition of a "ski lift" indicates that "seating" is an essential element of the system. And the cases relied upon by plaintiff which are cited on pages 13 through 15 of its main brief do not compel a different view of the instant facts inasmuch as these cases differ on their facts as to the "essentiality" of the missing parts to the unfinished or unassembled articles.

[1] Rule 10(h) states: unless the context requires otherwise, a tariff description for an article covers such article, whether assembled or not assembled, and whether finished or not finished;

Plaintiff, as if anticipating rejection by the court of its second argument, urges upon the court as a concluding argument the following:

> It is further submitted that if the Court rule the provision for lifting machinery is inapplicable the merchandise should be reliquidated as parts of lifting machinery since in its imported condition it is dedicated to use as a ski lift and a use provision is more specific than an *eo nomine* provision as parts of towers.

It is unnecessary for the court to entertain this third argument advanced by plaintiff inasmuch as it erroneously presupposes that the disputed merchandise was classified under the *eo nomine* provision for "towers" [2] in item 652.98, when, in point of fact, the disputed merchandise was classified under the provisions of item 652.98 for "structures and parts of structures"—tariff provisions which, like the tariff provision for lifting machinery, are *use* provisions. And plaintiff admits in its brief that the disputed merchandise constitutes "support structures".

For the reasons stated, plaintiff has failed to establish the allegations in its complaint, and, consequently, this action must be and is dismissed.

Judgment will be entered herein accordingly.

(C.D. 4530)

AMTHOR IMPORTS *v.* UNITED STATES

Dessert and bar sets

Court No. 68/17798

Port of San Francisco

[Judgment for plaintiff.]

(Decided April 25, 1974)

Glad & Tuttle (*George R. Tuttle* of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (*James Caffentzis*, trial attorney), for the defendant.

RICHARDSON, Judge: The merchandise at bar, consisting of dessert and bar sets, was classified in liquidation under items 651.75, 650.49, and 650.21, TSUS, at the duty rates of 22.36, 24.96 and 27.17 *per centum ad valorem*. It is claimed by the plaintiff-importer that the

[2] TSUS item 652.98 contains no provision for "parts of towers" as plaintiff's argument suggests.

merchandise should be classified as sets under items 651.75 and 650.49 or 650.21, TSUS, at the duty rate of 1 cent each plus 17.5 *per centum ad valorem*.

In its complaint plaintiff alleges, among other things, that the subject merchandise is similar in all material respects to the merchandise the subject of *Import Associates of America, Fraser's Inc.* v. *United States*, 56 CCPA 100, C.A.D. 961 (1969), and further, requests that judgment issue directing the district director to reliquidate the involved entry or entries under items 651.75 and 650.49 or 650.21, TSUS, in accordance with its claim. In its answer the defendant admits all of the material allegations of the complaint, and consents to the entry of judgment overruling the manner of assessment of duty by the district director and sustaining plaintiff's claim as to the dessert and bar sets.

In the case cited in the complaint the merchandise consisted of flatware sets of various kinds of knives, forks, and spoons imported from West Germany and Japan, classified in liquidation under item 651.75, TSUS, among other things, and assessed with duty at the *ad valorem* equivalent of the highest specific or compound rate applicable to any article in the set. The Customs Court sustained the protest lodged against the duty assessment, and held that the specific or compound rate of duty which is the highest for any article in the set if imported alone should be used in determining the duty and not the *ad valorem* equivalent, and further, that the applicable specific duty should be assessed against each article in the set. This latter holding of the Customs Court was sustained in the cited case on appeal to the Court of Customs and Patent Appeals as against the importer's contention in the appellate court that the specific duty assessment should be made against the set rather than against each article in the set.

In the instant case defendant admits that the merchandise at bar is similar in all material respects to the merchandise the subject of the cited case. Consequently, inasmuch as the pleadings fail to raise any triable issue in the case the necessity for further proceedings in this action is obviated.

Plaintiff's claim for classification of the subject merchandise under items 651.75 and 650.49 or 650.21, TSUS, as sets at the duty rate of 1 cent each plus 17.5 *per centum ad valorem* is sustained. Judgment will be entered herein accordingly.

(C.D. 4531)

AMTHOR IMPORTS *v.* UNITED STATES

Bar sets

Court No. 68/23617

Port of San Francisco

[Judgment for plaintiff.]

(Decided April 26, 1974)

Glad & Tuttle (*John McDougall* of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (*James Caffentzis*, trial attorney), for the defendant.

RICHARDSON, Judge: The merchandise at bar, consisting of bar sets, was classified in liquidation under items 651.75 and 650.49 or 650.21, TSUS, at the duty rate of 44.25 *per centum ad valorem*. It is claimed by the plaintiff-importer that the merchandise should be classified as sets under items 651.75 and 650.49 or 650.21, TSUS, at the duty rate of 1 cent each plus 17.5 *per centum ad valorem*.

It its complaint plaintiff alleges, among other things, that the subject merchandise is similar in all material respects to the merchandise the subject of *Import Associates of America, Fraser's Inc.* v. *United States*, 56 CCPA 100, C.A.D. 961 (1969), and further, requests that judgment issue directing the district director to reliquidate the involved entry or entries under items 651.75 and 650.49 or 650.21, TSUS, in accordance with its claim. In its answer the defendant admits all of the allegations of the complaint, and consents to the entry of judgment overruling the manner of assessment of duty by the district director and sustaining plaintiff's claim as to the bar sets.

In the case cited in the complaint the merchandise consisted of flatware sets of various kinds of knives, forks, and spoons imported from West Germany and Japan, classified in liquidation under item 651.75, TSUS, among other things, and assessed with duty at the *ad valorem* equivalent of the highest specific or compound rate applicable to any article in the set. The Customs Court sustained the protest lodged against the duty assessment, and held that the specific or compound rate of duty which is the highest for any article in the set if imported alone should be used in determining the duty and not the *ad valorem* equivalent, and further, that the applicable specific duty should be assessed against each article in the set. This latter holding of the Customs Court was sustained in the cited case on appeal to the Court of

Customs and Patent Appeals as against the importer's contention in the appellate court that the specific duty assessment should be made against the set rather than against each article in the set.

In the instant case defendant admits that the merchandise at bar is similar in all material respects to the merchandise the subject of the cited case. Consequently, inasmuch as the pleadings fail to raise any triable issue in the case the necessity for further proceedings in this action is obviated.

Plaintiff's claim for classification of the subject merchandise under items 651.75 and 650.49 or 650.21, TSUS, as sets at the duty rate of 1 cent each plus 17.5 *per centum ad valorem* is sustained. Judgment will be entered herein accordingly.

(C.D. 4532)

AMTHOR IMPORTS *v.* UNITED STATES

Serving sets

Court No. 68/28799

Port of San Francisco

[Judgment for plaintiff.]

(Decided April 26, 1974)

Glad & Tuttle (*George R. Tuttle* of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (*James Caffentzis*, trial attorney), for the defendant.

RICHARDSON, Judge: The merchandise at bar, consisting of serving sets, was classified in liquidation under items 651.75 and 650.49, TSUS, at the duty rate of 24.35 *per centum ad valorem*. It is claimed by the plaintiff-importer that the merchandise should be classified as sets under items 651.75 and 650.49, TSUS, at the duty rate of 1 cent each plus 17.5 *per centum ad valorem*.

In its complaint plantiff alleges, among other things, that the subject merchandise is similar in all material respects to the merchandise the subject of *Import Associates of America, Fraser's Inc.* v. *United States*, 56 CCPA 100, C.A.D. 961 (1969), and further, requests that judgment issue directing the district director to reliquidate the involved entry or entries under items 651.75 and 650.49, TSUS, in accordance with its claim. In its answer the defendant admits all of the allegations of the complaint, and consents to the entry of judgment overruling the manner of assessment of duty by

the district director and sustaining plaintiff's claims as to the serving sets.

In the case cited in the complaint the merchandise consisted of flatware sets of various kinds of knives, forks, and spoons imported from West Germany and Japan, classified in liquidation under item 651.75, TSUS, among other things, and assessed with duty at the *ad valorem* equivalent of the highest specific or compound rate applicable to any article in the set. The Customs Court sustained the protest lodged against the duty assessment, and held that the specific or compound rate of duty which is the highest for any article in the set if imported alone should be used in determining the duty and not the *ad valorem* equivalent, and further, that the applicable specific duty should be assessed against each article in the set. This latter holding of the Customs Court was sustained in the cited case on appeal to the Court of Customs and Patent Appeals as against the importer's contention in the appellate court that the specific duty assessment should be made against the set rather than against each article in the set.

In the instant case defendant admits that the merchandise at bar is similar in all material respects to the merchandise the subject of the cited case. Consequently, inasmuch as the pleadings fail to raise any triable issue in the case the necessity for further proceedings in this action is obviated.

Plaintiff's claim for classification of the subject merchandise under items 651.75 and 650.49, TSUS, as sets at the duty rate of 1 cent each plus 17.5 *per centum ad valorem* is sustained. Judgment will be entered herein accordingly.

(C.D. 4533)

AMTHOR IMPORTS, INC. *v.* UNITED STATES

Fondue fork sets

Court No. 68/62440

Port of San Francisco

[Judgment for plaintiff.]

(Decided April 26, 1974)

Glad & Tuttle (*John McDougall* of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (*James Caffentzis*, trial attorney), for the defendant.

RICHARDSON, Judge: The merchandise at bar, consisting of fondue fork sets, was classified in liquidation under item 651.75 and 650.49, TSUS, at the duty rate of 41.79 *per centum ad valorem*. It is claimed

by the plaintiff-importer that the merchandise should be classified as sets under items 651.75 and 650.49, TSUS, at the duty rate of 1 cent each plus 17.5 *per centum ad valorem.*

In its complaint plaintiff alleges, among other things, that the subject merchandise is similar in all material respects to the merchandise the subject of *Import Associates of America, Fraser's Inc.* v. *United States*, 56 CCPA 100, C.A.D. 961 (1969), and further, requests that judgment issue directing the district director to reliquidate the involved entry or entries under items 651.75 and 650.49, TSUS, in accordance with its claim. In its answer the defendant admits all of the allegations of the complaint, and consents to the entry of judgment overruling the manner of assessment of duty by the district director and sustaining plaintiff's claim as to the fondue fork sets.

In the case cited in the complaint the merchandise consisted of flatware sets of various kinds of knives, forks, and spoons imported from West Germany and Japan, classified in liquidation under item 651.75, TSUS, among other things, and assessed with duty at the *ad valorem* equivalent of the highest specific or compound rate applicable to any article in the set. The Customs Court sustained the protest lodged against the duty assessment, and held that the specific or compound rate of duty which is the highest for any article in the set if imported alone should be used in determining the duty and not the *ad valorem* equivalent, and further, that the applicable specific duty should be assessed against each article in the set. This latter holding of the Customs Court was sustained in the cited case on appeal to the Court of Customs and Patent Appeals as against the importer's contention in the appellate court that the specific duty assessment should be made against the set rather than against each article in the set.

In the instant case defendant admits that the merchandise at bar is similar in all material respects to the merchandise the subject of the cited case. Consequently, inasmuch as the pleadings fail to raise any triable issue in the case the necessity for further proceedings in this action is obviated.

Plaintiff's claim for classification of the subject merchandise under items 651.75 and 650.49, TSUS, as sets at the duty rate of 1 cent each plus 17.5 *per centum ad valorem* is sustained. Judgment will be entered herein accordingly.

Decisions of the United States Customs Court

Custom Rules Decision

(C.R.D. 74–6)

LIFE-O-MATIC PRODUCTS, INC., ET AL. *v.* UNITED STATES

Memorandum to Accompany Order

Court No. R70/3953 and 24 others

Port of New York

[Motion to quash granted in part.]

(Dated April 25, 1974)

Allerton deC. Tompkins for the plaintiffs.

Carla A. Hills, Assistant Attorney General (*John A. Gussow*, trial attorney), for the defendant.

LANDIS, Judge: Plaintiffs in this motion, seek relief modifying or otherwise quashing defendant's subpoena duces tecum which had sought production at trial of documents and other things identified in sixteen numbered paragraphs of a schedule annexed to the subpoena. Defendant opposes the motion. Rule 10.1(c) of this court *inter alia* provides that the court may "quash or modify any subpoena if it is unreasonable or oppressive." Defendant purports that plaintiffs have made no showing that the subpoena is oppressive or unreasonable. The court, nevertheless, has inherent power to protect anyone from oppressive or unreasonable use of process, even if the process is not actually intended to be oppressive or unreasonable. *Norman F. Hecht et al.* v. *Pro-Football, Inc., et al.*, 46 F.R.D. 605 (1969). It is also without question that a party, seeking production by a subpoena duces tecum from a party to the action, must establish good cause for issuance of the subpoena if it is challenged by a motion to quash. *Dart Industries, Inc.* v. *Liquid Nitrogen Processing Corp. of California*, 50 F.R.D. 286 (1970).

There has been, in this case, a good deal of personal correspondence between counsel for the parties and by counsel before the court wherein counsel refer to a district court matter that has nothing to do with the issues in this case. In acting on this motion, however, the court is solely concerned with the issues in this case. On the issues joined in this case defendant has failed to show, that at this particular stage in this reappraisement case, there is any good cause for producing the documents and information sought by the subpoena at trial.

Plaintiff's complaint in this action broadly challenges the customs valuation of merchandise, exported from England, at the price freely offered to all purchasers for export at the times of exportation, 19 U.S.C.A. § 1401a, during the period July 1966 to May 1968. The customs export value basis of valuation and the amount thereof are presumptively correct, which means that defendant need introduce no evidence until plaintiffs challenging the customs valuation prove otherwise. 28 U.S.C.A. § 2633. In proving otherwise, plaintiffs must establish not only that the customs valuation is incorrect but that the claimed value is correct. *Inter-Maritime Forwarding Co., Inc.* v. *United States*, 59 CCPA 84, C.A.D. 1044 (1972). Notwithstanding plaintiffs' burden of proof on the issue of valuation, defendant's subpoena *inter alia* requests plaintiffs to produce documents and things for the years 1960 to 1968, including such as are apparently in control of the foreign seller. Plaintiffs, in this reappraisement case, cannot very well carry their burden of proof without cooperation from the seller. The court cannot anticipate what that cooperation will be. The defendant does, of course, have the right to show any inaccuracies it can find in plaintiffs' case. This does not, however, open up to the defendant an entire field of exploration for documents and things apparently not now in plaintiffs' control, on the valuation issues which have long been present in this case. Such an exploration makes the subpoena an unreasonable attempt at discovery which is inappropriate at this stage. *United States* v. *Watchmakers of Switzerland Information Center, Inc.*, 27 F.R.D. 513, 515 (1961).

Plaintiffs, in this motion, seek relief modifying the subpoena duces tecum to the extent that the documents and things identified in items 1, 7, 8, 9, 13, 14, and 15, covering the period 1960 to 1968, be limited to the years 1966 through 1968, and that the subpoena be quashed with respect to documents and things in control of "Lan-Elec", the foreign seller, identified in items 3, 4, 5, 6, 10, 11, and 12 of the subpoena. The court is of the opinion that defendant's subpoena, in the posture of the issues joined at this stage of the proceeding, is an unreasonable and oppressive demand for documents and information that are not now shown to be reasonably necessary to defendant's defense considering

the heavy burden of proof plaintiffs have assumed in challenging the customs valuation.

The motion to limit and squash the subpoena duces tecum is, therefore, granted in part as follows: the subpoenaed items 1, 7, 8, 9, 13, 14, and 15 are limited to the period 1966 through 1968, and the subpoenaed items 3, 4, 5, 6, 10, 11, and 12 are quashed.

Order will so enter.

Decisions of the United States Customs Court

Abstracts

Abstracted Protest Decisions

DEPARTMENT OF THE TREASURY, *April 29, 1974.*

The following abstracts of decisions of the United States Customs Court at New York are published for the information and guidance of officers of the customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

VERNON D. ACREE,
Commissioner of Customs,

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/265	Rao, J. April 22, 1974	E. Dillingham, Inc.	73-6-01515	Item 309.30 8.5¢ per lb.	Item 309.75 7.5%	E. Dillingham, Inc. v. U.S. (C.D. 4406)	Alexandria Bay (Ogdensburg) Nylon 66, advanced waste in tow form
P74/266	Maletz, J. April 22, 1974	Technicon Corporation	72-6-01438	Item 547.55 29.5%	Item 547.53 14%	Agreed statement of facts.	New York Mixing coils (quartz glass) (containing over 95% silica by weight)
P74/267	Re, J. April 22, 1974	A & P Import Co.	72-2-00354	Item 772.15 10% or 11.5%	Item 772.35 7% or 8.5%	Venetianaire Corp. of America v. U.S. (C.A.D. 1084)	New York Mattress and pillow covers
P74/268	Re, J. April 22, 1974	C. Tennant Sons & Co. of N. Y.	72-11-02359	Item 772.15 10% or 8.5%	Item 772.35 7% or 6%	Venetianaire Corp. of America v. U.S. (C.A.D. 1084)	New York Mattress and pillow covers

Decisions of the United States Customs Court

Abstracts

Abstracted Reappraisement Decision

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R74/230	Maletz, J. April 22, 1974	International Expediters, Inc.	71-11-01865	Constructed value	Unit values set forth in schedule A attached to decision and judgment in column no. (4) which is headed "Unit Value for Each Article of Merchandise, Net Packed" (Protests covering entries listed in schedule B dismissed for lack of jurisdiction)	Judgment on the pleadings	Chicago Radio chassis and radios, assembled in and exported from Taiwan, with or without earphones and/or batteries

Tariff Commission Notices

Investigations by the United States Tariff Commission

DEPARTMENT OF THE TREASURY, *May 9, 1974.*

The appended notices relating to investigations by the United States Tariff Commission are published for the information of Customs Officers and others concerned.

VERNON D. ACREE,
Commissioner of Customs.

[337–33]

CERTAIN DISPOSABLE CATHETERS AND CUFFS THEREFOR

Notice of hearing

Notice is hereby given that the United States Tariff Commission will hold a public hearing in connection with investigation No. 337–33, Certain Disposable Catheters and Cuffs Therefor, on May 8, 1974, at 10:00 a.m., E.D.T., in the Hearing Room of the U.S. Tariff Commission Building, 8th and E Streets N.W., Washington, D.C., for the purpose of allowing complainants opportunity to show cause why the complaint should not be dismissed and the investigation terminated. Requests from interested parties for appearances at the hearing should be received by the Secretary of the Tariff Commission, in writing, at his office in Washington, D.C. 20436, not later than noon, Friday, May 3, 1974.

Notice of the institution of the investigation and the ordering of a public hearing for October 9, 1973 (subsequently postponed) was published in the *Federal Register* on August 15, 1973 (38 F.R. 22083). Notice of the postponement of the hearing was published in the *Federal Register* on September 19, 1973 (38 F.R. 26244). Notice of the public hearing held on March 12, 1974, was published in the *Federal Register* on February 7, 1974 (39 F.R. 4821). Notice of the resumption of

the public hearing held April 23, 1974, was published in the *Federal Register* on March 18, 1974 (39 F.R. 10193).

By order of the Commission:

KENNETH R. MASON,
Secretary.

Issued April 25, 1974.

[337–35]

CERTAIN HYDRAULIC TAPPETS

Notice of Investigation, Scope of Investigation and Hearing

A complaint was filed with the Tariff Commission on May 10, 1973, on behalf of Johnson Products, Inc., of Muskegon, Michigan, alleging unfair methods of competition and unfair acts in the importation and sale of certain hydraulic tappets which are embraced within the claims of U.S. Patents No. 3,358,658, Re. 25,974 and Re. 25,154. On July 29, 1973, Johnson Products, Inc., filed a supplemental complaint alleging unfair methods of competition and unfair acts in the importation and sale of certain hydraulic tappets employing the nonfunctional markings of tappets marketed by Johnson Products. The complainant alleges that the effect or tendency of the unfair methods or acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States in violation of the provisions of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Welles Manufacturing Corporation, PKC Company, and Power Industries, Inc., each located in Northvale, New Jersey, have been named as importers and distributors of the subject products. Having conducted, in accordance with section 203.3 of the Commission's Rules of Practice and Procedure (19 C.F.R. 203.3), a preliminary inquiry with respect to the matters alleged by the said complainant, the United States Tariff Commission, on April 24, 1974, ORDERED:

That for the purposes of section 337 of the Tariff Act of 1930, an investigation is instituted with respect to the alleged violations in the importation and sale in the United States of certain hydraulic tappets made in accordance with the claims of U.S. Patents No. 3,358,658, Re. 25,974 and Re. 25,154 with nonfunctional markings employed by the complainant, Johnson Products, Inc.

That a public hearing be held on June 10, 1974, at 10 a.m., E.D.T., in the Hearing Room, U.S. Tariff Commission Building, 8th and E Streets, N.W., Washington, D.C. All parties concerned will be afforded an opportunity to be present, to produce evidence, and to be

heard concerning the subject matter of the investigation. Interested parties desiring to appear and give testimony at the hearing should notify the Secretary of the Commission, in writing, at least five days in advance of the opening of the hearing.

Public notice of the receipt of the complaint and initiation of the preliminary inquiry was published in the *Federal Register* on June 19, 1973 (38 F.R. 16002). Notice of an extension of time for filing written views was published in the *Federal Register* on August 3, 1973 (38 F.R. 20958). The complaint and supplemental complaint were served upon the named parties and all known interested parties and have been available for inspection by interested persons continually since issuance of the notice of preliminary inquiry, at the Office of the Secretary, located in the U.S. Tariff Commission Building and in the New York City office of the Commission, located in Room 437 of the Customhouse.

By order of the Commission:

KENNETH R. MASON,
Secretary.

Issued April 25, 1974.

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